

### **REMARKS**

The pending Office Action addresses and rejects claims 1-4, 6-21, and 23-26. Applicants respectfully request reconsideration in view of the amendments and remarks submitted herein.

#### ***Amendments to the Claims***

Independent claim 1 is amended to recite that a tissue retractor and guide device includes an elongate member having a proximal portion and a substantially planar distal portion adapted to retract tissue. Support for this amendment can be found throughout the specification, for example in paragraphs 21 and 23 of the published application. Claim 1 is also amended to include some of the limitations of claim 4, which is amended accordingly, and all of the limitations of claim 6, which is now cancelled. Claims 7 and 8 are amended to depend from claim 1.

Independent claims 18 and 21 are amended to recite a tissue retractor and guide device having a guide member with first and second barrels that define first and second lumens for receiving a tool. Support for these amendments can be found throughout the specification, for example in paragraphs 25 and 26 of the published application.

No new matter is added.

#### ***Claim Rejections Pursuant to 35 U.S.C. §102***

The Examiner rejects claims 18-21, 23, and 24 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,676,666 of Oxland et al. ("Oxland"). Applicants respectfully disagree.

Claims 18 and 21 recite at least one tissue retractor and guide device having a guide member mated to a distal portion of an elongate member and having first and second barrels that define first and second lumens for receiving a tool. Oxland discloses an installation device (62) with two separate elongate members or blades (68, 70). Each blade has a single guide cylinder (80, 82) disposed thereon. Neither blade has a guide member with two barrels, as required by independent claims 18 and 21.

Independent claim 18 further requires a cross member adapted to removably connect two tissue retractor and guide devices. The Examiner argues that the hinge (66) of the device constitutes a cross member that connects the first blade (68) to the second blade (70). As noted above, however, claim 18 requires that the cross member be adapted to removably connect two guide members that *each have first and second barrels* that define first and second lumens for receiving a tool. Oxland does not disclose such a device and therefore claim 18 further distinguishes over Oxland.

Accordingly, claims 18 and 21, as well as claims 19-20 and 23-24 which depend therefrom, distinguish over Oxland and represent allowable subject matter.

***Claim Rejections Pursuant to 35 U.S.C. §103***

Claims 1-4 and 6-17

Claims 1-4 and 6-17 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Oxland in view of U.S. Patent No. 4,686,972 of Kurland. The Examiner argues that Oxland discloses the claimed invention except that it fails to teach an elongate member having a distal-most end surface that is substantially concave. Thus, the Examiner relies on Kurland to disclose a drill guide (10) having concave ends (6) to facilitate proper seating on the drilling target.

Independent claim 1 recites a tissue retractor and guide device having an elongate member and a guide member coupled thereto such that a substantially planar distal portion of the elongate member extends a distance beyond a distal-most end of the guide member to form an extension portion. The guide member includes at least one mating element formed thereon and adapted to mate to a spinal implant. The Examiner submits that “the elongate member comprises the guide member and therefore at least by incorporation has the distal, tissue retracting portion that extends a distance beyond a distal-most end of the guide member.” *Office Action dated Feb. 12, 2007*. While Applicants continue to disagree, accepting that the elongate member (68, 70) comprises the guide member (72, 74) and by incorporation, the opposing lips (76, 78) extend a distance beyond a distal most-end of the guide member, as the Examiner suggests, then Oxland does not disclose a mating element formed on the guide member and adapted to mate with a spinal implant. Claim 1 requires two separate and distinct elements: a distal portion of the elongate member that extends a distance

beyond a distal-most end of the guide member to form an extension portion *and* a mating element formed on the guide member and adapted to mate with a spinal implant. Oxland does not disclose both an of these distinct elements, and Kurland does not remedy this deficiency in Oxland. Kurland simply discloses a drill guide with a curved distal end to facilitate proper seating on bone. Kurland does not disclose any type mating element adapted to attach to a spinal implant. Therefore, claim 1, as well as claims 2-4 and 7-17 which depend therefrom, distinguish over Oxland and Kurland, taken alone or combined, and represent allowable subject matter.

Claims 25 and 26

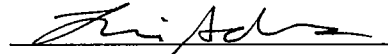
The Examiner rejects claims 25 and 26 pursuant to 35 U.S.C. §103(a) as being obvious over Oxland. Claims 25 and 26 depend from claim 21. Thus, for the same reasons previously discussed with respect to claim 21, claims 25 and 26 distinguish over Oxland and represent allowable subject matter.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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